Government Procurement Process: Architects & Professional Engineering Services

Office of Economic Development
Procurement Branch
http://www.gov.ns.ca/tenders

May 31, 2004

106-04957/

Table of Contents

INTRODUCTION 1

APPLICATION 1

SCOPE of WORK 2

SECTION 1 3
Procurement of Professional Services with Estimated Value Less Than $50,000 3
1.1 Selection Utilizing Database 3
1.2 REI, RFQ, RFP 4
1.3 Performance Evaluation 4

SECTION 2 5
Procurement of Professional Services with Estimated Value Greater Than $50,000 5
2.1 Contracting Authority Responsibilities 5
2.1.1 Public Tender Office (PTO) Cover Sheet 5
2.1.2 Instructions to Bidders 5
2.1.3 Agreement (Standard Form) 5
2.1.4 General Conditions (Standard Form) 5
2.1.5 Supplementary General Conditions 5
2.1.6 Terms-of-Reference and Scope-of-Work 6
2.2 Requests for Information/Expressions of Interest 6
2.3 Contracting Procedure 6
2.4 Submission Evaluation 7
2.4.1 Evaluation Committee 7
2.4.2 Evaluation Process 7
2.4.3 Evaluation Conclusion 7
2.4.4 Financial Information 8
2.4.5 Variance Clause 8
2.4.6 Assigning Points Based on Price 11
2.4.7 Evaluation Procedure: 12
2.5 Successful Submissions 13
2.6 Unsuccessful Submissions 13
2.7 Award Recommendation 13
2.8 Performance Evaluation 13

Glossary of Terms 14

APPENDIX A 15

APPENDIX B 16

This booklet is intended to act as a guide to all departments, agencies, boards and commissions of the Government of Nova Scotia for the procurement of Architectural and Engineering Services.

For assistance, access to the Architectural and Professional Engineering Standing Offer or to provide comments on this process please contact:

Rick Draper
Director of Procurement
Procurement Branch
Office of Economic Development
Telephone: (902) 424-4557
Facsimile: (902) 424-0844
E-mail: draperrc@gov.ns.ca

John O'Connor, P.Eng.
Director Engineering and Design
Nova Scotia Department of
Transportation and Public Works
Telephone: (902) 424-2756
Facsimile: (902) 424-0566
E-mail: oconnorj@gov.ns.ca

Procurement Procedure
Professional Services - Architects and Professional Engineers

INTRODUCTION:

The Province of Nova Scotia is committed to procure Architectural and Professional Engineering services in accordance with the *Province of Nova Scotia, Policy on Government Procurement, January 26, 2001* referred to hereafter in this document as the *Procurement Policy*. The procedures described here are designed to be consistent with and promote the concept of best value accruing to the Province in the context of the overall project for which services are required. The Province recognizes that certain professional services, such as design services, may have a significant influence on a project's subsequent construction, maintenance and operations costs. The extent of this influence is often disproportionate to the direct price of the professional services procured. Accordingly, these procurement procedures are designed to encourage the use of Qualifications-Based-Selection (QBS) concepts while at the same time preserving the critical role of price competition.

The Province recognizes that the effort associated with preparing procurement documentation can be significant for all parties involved. These procedures are intended to promote quality and efficiency while at the same time minimizing the cost and effort associated with responding to government requirements.

APPLICATION:

This process applies (where deemed appropriate, at the discretion of the Contracting Authority) to government departments, agencies, boards and commissions. It is also recommended that this process be used by crown corporations, municipalities, academic institutions, school boards and health sector entities (MASH Sector). The procedures included in this document will be used for the procurement of Architectural and Professional Engineering services to the extent possible and consistent with the established *Procurement Policy*. These procedures will provide Architects and Professional Engineers an opportunity to compete fairly and openly on the basis of their business and professional qualifications. Important characteristics such as technical competency, management expertise and administrative control processes are given extensive consideration while preserving the principle of best value for the Province.

These procurement procedures incorporate two methods based on the Contracting Authority's estimated value of the assignment. Architectural and Engineering service assignments estimated to have a value **less than $50,000**, will be procured using a standing offer which lists basic qualifications and, where necessary, may involve the subsequent evaluation of each proponent's project specific submission. Architectural and Engineering service assignments estimated by the Contracting Authority to have a value **greater than $50,000**, will be procured by public tender, with notice being given on the electronic public bid notice system and advertisement through public media.

SCOPE of WORK

The Contracting Authority must establish the Project Scope and Terms of Reference in advance of any service requirement proceeding. Precise and comprehensive scope of work is critical to the successful execution of a professional service assignment.

The type and approach to contracting will vary dependent on how well the project is understood and the completeness of the Terms of Reference. For instance, where the scope of work can be precisely and completely defined by the Contracting Authority, then a Request for Quotation (RFQ) or tender type of procurement can and should be used. In such instances, subject to satisfying a stringent set of standards and specifications, price will represent a significant factor of the decision making process.

On the other hand, if the scope of work cannot be completely defined, or the Contracting Authority is unsure how to undertake the assignment, the Request for Proposal Process may be undertaken. Procurements in these cases may involve a two-stage process where:

- initially a Request for Expressions of Interest (REI) is issued
- followed by a Request for Proposal (RFP)

The REI seeks general information from prospective bidders regarding basic information such as general approach, resource capabilities, manager's credentials and interest in the specific project being considered. REIs are normally used to confirm project scope and develop a short list of suppliers who will be invited to submit a detailed proposal in response to the need. REIs do not include a consideration of prices, they are used as instruments to screen based on technical and managerial grounds in advance of the price based part of the competition.

An RFP is then used where a supplier is invited to propose a solution to a problem, requirement or objective. The RFP is to lay out as clearly and completely as possible the scope of the project, any deliverables suppliers would be committing to and the criteria which will be used to identify the successful proposal. Firms are therefore encouraged to use ingenuity in developing their methodology and proposal to complete the project Scope of Work.

SECTION 1:

Procurement of Professional Services with Estimated Value Less Than $50,000.

For procurement of services estimated at less than $50,000 the Contracting Authority may elect to use the same procedure as for services estimated above $50,000 as outlined in this policy or may elect to establish standing offers. (See Appendix A)

Architectural and Engineering services will be procured on a basis of qualifications, competency, and price or, if appropriate, to the type of assignment, a combination of qualifications and competency (where pre-approved in writing by the Deputy Minister). This procedure will be used except where an exemption exists under the ***Procurement Policy***. To be eligible for selection, firms wishing to compete for assignments must preregister their qualifications through the annual standing offer tender call. The onus for submitting and maintaining up-to-date qualifications rests solely with the submitting firm.

Requests for standing offers will be advertised annually by the Contracting Authority. Firms may remain on the standing offer list for a maximum of two years before they are required to update their qualifications.

1.1 Selection Utilizing Database:

When the project scope is sufficiently detailed, the Contracting Authority will establish selection criteria in order to short-list prospective professional firms. The Contracting Authority will then apply these criteria to identify **all** conforming preregistered firms listed on the standing offer. The Contracting Authority is responsible for ensuring that the selection criteria are consistent with the project Scope of Work. However, considerable latitude may be exercised to establish a short-list that will avoid unwarranted and excessive bidding effort. The number of professional firms identified from the standing offer will vary depending on the number of selection criteria and the number of available firms that are registered. Care should be taken when defining the Scope of Work to avoid identifying an inordinate number of firms from the database.

The number of firms selected from the database for consideration will vary depending on the complexity or uniqueness of the project. Normally, this number will range from two (2) to four (4). It is suggested the following guideline be used: less than $10,000 - one (1) or two (2), $10,000 to $30,000 - two (2) to four (4), $30,000 to $50,000 - three (3) or four (4). After an appropriate number for firms have been identified from the database, and depending upon the completeness of the Scope of Work, the Contracting Authority may solicit from the short listed organization(s):

- additional information (RFI);
- a price quote (RFQ); or
- a proposal (RFP)*

**Under exceptional circumstances the Contracting Authority may negotiate a price with the one organization determined to be better qualified, subject to the written preapproval of the Deputy Minister.*

1.2 REI, RFQ, RFP:

A request for price quotation from multiple firms may be undertaken whenever:

- the nature of the assignment warrants such (eg., design assignments normally are not conducted using price quotations);
- the Scope of Work is clearly and well defined, and
- the firm that submits the lowest calculated overall price would normally be offered the assignment.

1.3 Performance Evaluation:

Upon completion of the assignment, the firm's performance may be evaluated and the results recorded in a database for future reference. Contract award procedures and reporting requirements must conform to Provincial policy and the requirements of the Office of Economic Development, Procurement Branch.

SECTION 2:

Procurement of Professional Services with Estimated Value Greater Than $50,000.

The following procedure will be used when procuring Architectural and Engineering services where the Contracting Authority estimates the value of the assignment is greater than $50,000. This procedure is a qualifications based selection system which accounts for such factors as quality and quantity of professional and technical staff, related experience, proposed management processes, past performance and other pertinent factors in addition to the price. Except where an exemption exists under the Procurement Policy, this procedure must be used.

2.1 Contracting Authority Responsibilities:

2.1.1 Public Tender Office (PTO) Cover Sheet:

The Contacting Authority is responsible for drafting a cover sheet which is to include all pertinent dates, tender numbers, project numbers and contact information. Each copy of procurement documents must include such a cover page.

2.1.2 Instructions to Bidders:

The Contracting Authority is responsible for drafting the instructions (Instructions to Bidders) which advise prospective firms of bidding requirements and the type of procurement used to select the successful firm (*eg. RFP*). These instructions must include all necessary project specific information and any special or mandatory requirements. The Instructions to Bidders will normally accompany the other procurement documents as a separate document.

2.1.3 Agreement (Standard Form):

A blank copy of the Province's standard form of professional services contract should be included with each procurement document (see Appendix B). No changes to the standard form of agreement may be made.

2.1.4 General Conditions (Standard Form):

A copy of the Province's standard form of general conditions to the professional services agreement should be included with each procurement document. No changes to the standard form of general conditions may be made.

2.1.5 Supplementary General Conditions:

Where circumstances warrant amendment of the standard general conditions to the professional services agreement, the Contracting Authority may draft supplementary general conditions that will

add to or modify the general conditions.

2.1.6 Terms of Reference and Scope of Work:

The Contracting Authority is also responsible for drafting the Terms of Reference which define requirements for the execution of the services, including the Scope of Work that details the nature and extent of work to be performed. The requirements detailed in the Scope of Work are essential to bidders when developing their proposals. The Scope of Work must be concise, precise, clear in their meaning, and as complete as possible to permit proponents to develop a proposal that meets the project objectives and avoids the need for subsequent changes, while allowing sufficient latitude to permit alternate methodologies.

The Terms of Reference must also include the following information:

- The evaluation criteria and scoring system which will be used to determine the proposal rating.
- The minimum evaluation score which must be achieved before a proposal is deemed qualified and subject to further consideration. Generally this would be 80% of the available technical/ managerial points.
- The method of measurement and payment for professional work (ie. remuneration).
- Liaison, reporting and invoicing requirements.
- List of deliverables.
- Any special indemnifications, insurance and warranty provisions peculiar to the assignment.
- Any other requirements.

2.2 Requests for Information/Expressions of Interest

Occasionally the Contracting Authority will not be fully familiar with the willingness of, expertise available to, or methodology within the professions to achieve project objectives. In such cases the Contracting Authority should consider an REI to determine the consulting industry's interest in a particular project.

2.3 Contracting Procedure

The Contracting Authority will follow the procedures for public tendering which are detailed in the ***Procurement Policy***. Services will usually be tendered as an RFP using a two envelope system. The first envelope will contain the managerial and technical information submission detailing the bidder's qualification, their understanding of the project objectives, their capabilities (resources), their work plan and methodology. The second envelope will contain the financial information submission. The information contained in each envelope must be clearly marked and conform to the Terms of Reference. Failure to conform may result in disqualification of the submission.

2.4 Submission Evaluation

2.4.1 Evaluation Committee:

The Contracting Authority will receive proposals stamped by the PTO with the envelopes containing financial information **unopened**. An evaluation committee, usually consisting of not fewer than three persons, will be convened to evaluate the technical and management information submissions. The Contracting Authority will be responsible to coordinate the evaluation process. While evaluation committee members would normally be Civil Servants, the Province may contract with other agencies or individuals to perform all or part of any evaluation. In such cases, the Contracting Authority is advised to execute appropriate confidentiality and conflict of interest agreements.

2.4.2 Evaluation Process:

Qualifications will be evaluated in accordance with the proposal evaluation criteria included in the Competition Document. Each evaluator will evaluate the proposals **independently**, without consultation with others. Evaluators must consider only the information documented within the proposal using the defined evaluation criteria exclusively, and must avoid assumptions regarding the submission. If an individual evaluator has personal knowledge that a proposal contains a significant misrepresentation, or fundamental error, such should be immediately communicated to the Contracting Authority.

2.4.3 Evaluation Conclusion:

Upon completion of individual evaluations, the evaluators will review the results and identify any significant differences in rating. If a significant difference in a rating is identified, **which would alter the final result**, the Contracting Authority will review the result and may elect to have the evaluators jointly discuss their results in an attempt to acquire a clear decision. While consensus among the evaluation committee is desirable, unanimity is not necessary. Balanced judgement and discretion must be exercised in reviewing evaluations done by others. The Contracting Authority should accept reasonable differences among evaluators such as:

- natural variation in scoring philosophy (eg., conservative vs liberal rating tendencies);
- normal variation in evaluator's interpretation of evaluation criteria;
- occasional minor error in evaluating a proposed qualification or work plan;
- other incidental deviations from the median evaluation which would not be classified as a fundamental evaluation error.

Except as provided for in the review process described in the proceeding paragraph, revisions of ratings should normally be avoided. The ratings received from the evaluators will be tabulated using the median scores for each category described in the evaluation criteria. **The median is defined as an ordered set of values below which and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number.**

The following are examples of median calculations based on a category valued at 20 points.

Example #1: Odd Number of Evaluators	14 15 18 Median = 15
Example #2: Even Number of Evaluators	14 15 16 18 Median = (15 + 16) /2 = 15.5
Example #3: Repeated Values (Even Number of Evaluators)	14 15 15 18 Median = (15 + 15) /2 = 15
Example # 4: Repeated Values (Odd Number of Evaluators)	14 15 15 16 18 Median = 15

Overall ratings will then be calculated by the Contracting Authority and proposals receiving a rating which meets or exceeds the minimum threshold will be deemed qualified and eligible for further consideration, with the remaining points awarded according to cost.

Normally the technical/managerial submission will be rated out of 90 points and a minimum of 80% (72 points) of available points required as the threshold and the remaining points awarded according to cost.

2.4.4 Financial Information:

While standard practice calls for a 90%/10% or 80%/20% ratio between technical/managerial and price related points allocated in a competition, occasionally, depending on the nature of the service, the Contracting Authority may elect to use an alternative split, such as 85%/15%, or 70%/30%. The use of a 70%/30% split, with a greater emphasis on cost, would apply where the scope and procedure are well defined, and the service provision is relatively standardized, such as inspection, testing and so forth.

The financial information envelopes attached to proposals which were deemed qualified will be opened by the Contracting Authority and the prices, rates, expense disbursements, etc, analysed and compared. In cases where the prices must be analysed in order to establish an assessed total cost of professional services (eg., where more than one factor contributes to the overall cost) the price analysis should accompany the evaluation sheet.

2.4.5 Variance Clause :

Notwithstanding the technical/managerial and price scores, the Contracting Authority reserves the

right to reject any proposal where prices are deemed to be unreasonable relative to other prices bid. Unless indicated otherwise in the RFP, proposals with price submissions varying from the average qualified bid by 25% or more may be rejected in accordance with the following procedure.

(1) The **median** value of all price submissions will be determined.
(2) The percentage variance from the median will be calculated for each price submission.
(3) The **average** value will be calculated for all submissions which do not vary from the median by more than **25%**.
(4) Price submissions will then be evaluated relative to the **average** value calculated in step (3) above. Any proposal with a price submission varying by more than 25% from this average, will be rejected.

Several examples of variance calculations follow.

Example #1: All Bids Acceptable

Price Submission	**A**	**B**	**C**	**D**	**E**
Price	$50,000	$55,000	$60,000	$65,000	$70,000
Median (Step 1)	$60,000				
% Variance from Median (Step 2)	17%	8%	0%	8%	17%
Use in Average	yes	yes	yes	yes	yes
Average (Step 3)	$60,000				
% Variance from Average (Step 4)	17%	8%	0%	8%	17%
Acceptability of Price Submission	yes	yes	yes	yes	yes

Example #2: High Bid Unacceptable

Price Submission	**A**	**B**	**C**	**D**	**E**
Price	$50,000	$55,000	$60,000	$65,000	$80,000
Median (Step 1)			$60,000		
% Variance from Median (Step 2)	17%	8%	0%	8%	33%
Use in Average	yes	yes	yes	yes	no
Average (Step 3)			$57,500		
% Variance from Average (Step 4)	13%	4%	4%	13%	39%
Acceptability of Price Submission	yes	yes	yes	yes	no

Example #3: Low Bid Unacceptable

Price Submission	**A**	**B**	**C**	**D**	**E**
Price	$40,000	$55,000	$60,000	$65,000	$70,000
Median (Step 1)			$60,000		
% Variance from Median (Step 2)	33%	8%	0%	8%	17%
Use in Average	no	yes	yes	yes	yes
Average (Step 3)			$62,500		
% Variance from Average (Step 4)	36%	12%	4%	4%	12%
Acceptability of Price Submission	no	yes	yes	yes	yes

Example #4: High Bid Unacceptable (based on % variance from the average)

Price Submission	**A**	**B**	**C**	**D**	**E**
Price	$46,000	$48,000	$60,000	$62,000	$74,000
Median (Step 1)	$60,000				
% Variance from Median (Step 2)	23%	20%	0%	3%	23%
Use in Average	yes	yes	yes	yes	yes
Average (Step 3)	$58,000				
% Variance from Average (Step 4)	19%	16%	3%	6%	26%
Acceptability of Price Submission	yes	yes	yes	yes	no

The variance clause shall not apply in instances when only 1 or 2 qualified bids are received.

2.4.6 Assigning Points Based on Price :

For price submissions qualifying under Section 2.4.5, points will be assigned as follows. If the technical/managerial submission is rated out of 90 points of 100, the remaining 10 points will be allotted to price. The lowest price and all prices within 5% of the lowest price will be awarded 10 points. The next lowest price (beyond 5%) and all prices within 5% of the next lowest price will receive 8 points. Points for other submissions will be assigned with 2 fewer price points for each successively higher priced proposal. But again, each time the same score will be awarded if successive prices are within 5% of the last highest price. (See Section 2.4.7)

2.4.7 Evaluation Procedure:

Proposal evaluation method for engagements valued in excess of $50,000

1. Submit proposal with price in a separate envelope ("two-envelope system")

Evaluation Stage 1

2. Open the "technical/managerial" envelope only.

3. Allocate points to "technical and managerial" and other predefined evaluation criteria and determine each proposal's score based on the total value assigned to this component.

4. Reject any proposal not meeting the minimum requirements for the technical/managerial portion.

Evaluation Stage 2

5. Open the price envelope for qualifying proposals only.

6. Award X Points to the lowest price and to all prices within 5% of the lowest price, where X is the price component of the split (e.g. for a 90/10 split, X = 10).

7. Award 0.8(X) points to the next lowest price, and all prices within 5% of this price.

8. Award 0.6(X) points to the next lowest price, and all prices within 5% of this price.

9. Continue to award 0.2(X) fewer points until zero points are awarded.

Evaluation Completion

10. Add all the scores for each proposal, to give a total score out of 100.

11. Award the work to the proposal with the highest combined (technical/managerial + cost) score.

12. In the event of a tie between the overall scores of 2 or more proposals, award the work to the proposal with the lowest price.

2.5 Successful Submissions

The qualified firm submitting highest assessed value, will usually be recommended for award of a contract. No change in the Scope of Work may be negotiated prior to the award of a contract. Any changes to the terms or conditions of a professional services contract must be negotiated and executed in strict accordance with contract conditions and ***Procurement Policy***.

2.6 Unsuccessful Submissions

Financial information envelopes attached to submissions not deemed qualified will be **returned unopened**. Managerial and Technical information submissions will be retained for record purposes and held subject to public disclosure under the terms of the Freedom of Information and Protection of Privacy Act. Bidders should be advised of the opportunity for, and encouraged to receive a debriefing as to how proposals were evaluated. All debriefings will be presented orally at the Contracting Authority's office unless a mutually agreeable alternative is identified. Such debriefing should deal only with the consolidated evaluation and in no case should include the evaluation of an individual evaluator. The purpose of such debriefings is to focus on communicating the evaluation's aggregate result and is intended to help bidders identify the areas in which their proposals did not meet the stated requirements or could be improved for future occasions.

2.7 Award Recommendation

At the conclusion of the evaluation process, a recommendation detailing the results will be forwarded by the Contracting Authority to the appropriate agency for formal authorization to award a contract. Upon receiving written concurrence, the Contracting Authority will notify the successful firm of the intent to award a contract and two original copies of the contract documents will be drafted and submitted to the selected firm for signature and immediate return for subsequent processing. All other bidders should be notified of the result as soon as possible after a contract award decision is made.

2.8 Performance Evaluation

Upon completion of the assignment, the firm's performance may be evaluated and the results recorded in a database for future reference. Contract award procedures and reporting requirements must conform to Provincial policy and the requirements of the, Office of Economic Development, Procurement Branch.

Glossary of Terms
Used in the Procurement of Professional Services

Contracting Authority: Individual or Public Official or his/her agent who is responsible for the procurement of professional services and preparation of tender documents.

Province: Province of Nova Scotia

For the purposes of this policy, the following definitions are provided.

Invitation to Tender

An invitation to tender (also referred to as request for bids or request for quotations) solicits competitive bids. It is used when the requirement is adequately defined to permit the evaluation of tenders against clearly stated criteria and specifications. The tender document describes the specifications to be met and the terms and conditions that will apply.

Request for Proposal

A request for proposal is used when a supplier is invited to propose a solution to a problem, requirement, or objective. Suppliers are requested to submit detailed proposals (also referred to as bids) in accordance with predefined criteria. The selection of the successful proposal is based on the effectiveness, value, and price of the proposed solution. Negotiations with suppliers may be required to finalize any aspect of the requirement.

Request for Expression of Interest

The Request for the Expression of Interest is similar to the Request for Proposal, where suppliers are invited to propose a solution to a problem. The REI, however, is only the first stage in the procurement process. Bidders responding to the REI will be short listed according to their scoring in the evaluation process. The short listed firms will then be invited to respond to a Request for Proposal. The selection process will be the same as the Request for Proposal

Department

In this policy "department" includes agencies, boards, and commissions that are subject to the Auditor General Act, or other public sector entities for whom compliance with this policy has been directed by the minister responsible.

Unsolicited Proposals

Unsolicited proposals are submissions from any source where the originator believes the proposal may be of benefit to the Province. These proposals are not in response to a tender call or other type of request from government.

APPENDIX A

Procurement of Professional Services less than $50,000, - Architects and Professional Engineers

In accordance with the Procurement Policy, the Province will use a qualifications-based selection process for engaging professional firms to provide Architectural and Professional Engineering services. These services may include design as well as analytical and other related technical services usually associated with architectural and engineering firms.

Any firm interested in providing professional services to the Province with an estimated value less than $50,000 is to be registered with the Contracting Authority's standing offer database.

Procedures:

The Contracting Authority will annually invite firms through public advertisement to submit their qualifications in a prescribed electronic format. Where identified in the Standing Offer, firms may also submit supplementary information from time to time at their sole discretion, thereby keeping the database information up-to-date and current. This information will be entered by the firm's representative into an electronic database to form a Register.

The Contracting Authority will select from the Register, a short list of firms qualified to meet all project criteria and able to perform the work according to the following primary areas:

- financial stability/insurability/bondability;
- availability of qualified personnel;
- experience on similar projects;
- professional independence and integrity;
- location/local knowledge;
- previous involvement of the firm.

A final selection of the preferred firm will be made based on supplementary areas:

- managerial ability;
- technical competence;
- proven performance;
- price.

Criteria related to strategic or other special procurement will only be applied in strict accordance with Government policies. For all projects, the nature and scope of the services must be established on the basis of:

- description of the project;
- budget;
- schedule;
- other special considerations.

In cases where the fee for design services are to be established by bilateral negotiation rather than by advance tender, the Province may also negotiate with the next highest ranked firm.

APPENDIX B

STANDARD FORM OF CONTRACT
FOR
ARCHITECTURAL & PROFESSIONAL ENGINEERING SERVICES
(LATEST EDITION)

REQUEST FOR PROPOSALS yyyy-nnnnnn

xxxx

FOR THE DEPARTMENT OF xxx

PROJECT NO. nn.nnn

THIS AGREEMENT made this nnth day of mmm A.D., yyyy

BETWEEN:

HER MAJESTY THE QUEEN in right of Her PROVINCE OF NOVA SCOTIA, represented herein by the Minister of Transportation & Public Works

(hereinafter referred to as "the Minister")

OF THE FIRST PART

- and -

XXXXXX
(hereinafter referred to as "the Supplier")

OF THE SECOND PART

WITNESSETH THAT for consideration, including the mutual covenant and Agreements herein contained, the parties hereto covenant and agree with each other as follows:

1. SERVICES

1.1 The Supplier shall, during the period commencing on the nnth day of mmm yyyy, and ending on the nnst day of mmm yyyy, provide the services to the Minister as outlined in Schedule "A" attached hereto.

1.2 The Supplier shall perform the work under the direction and always to the satisfaction of the Minister.

1.3 When anything is required to be done by the Minister, it may be done by anyone duly authorized to act on his behalf.

2. PAYMENT

2.1 Subject to article 2.3 the Minister, for the satisfactory performance of the services referred to in article 1.1, shall pay the Supplier in respect of the period during which services are performed in accordance with the fee structure and work estimate set forth in the Schedule "B" attached hereto.

2.2 The Minister shall remit to the Supplier the amount of any outstanding invoices due to the Supplier under article 2.1 after presentation by the Supplier to the Minister, on each instance, of a statement, certified correct and approved by the appropriate officer of the Minister, showing *inter alia*, that the Supplier performed the services during the period in respect of which the amount is to be paid.

2.3 Notwithstanding anything herein contained, unless prior written approval of the Minister is obtained, the total amount payable to the Supplier under the Agreement shall not exceed AMOUNT ($nnnn.00) in Canadian funds (not including taxes) and no work in excess of this limitation shall be undertaken.

2.4 The Supplier shall maintain appropriate accounting records for the services provided under this Agreement and shall make available to the Minister such accounting records for audit purposes as the Minister may require.

3. TERM OF AGREEMENT

3.1 Term of this Agreement shall be as defined in Paragraph 1.1 of this Agreement.

3.2 Notwithstanding article 3.1, this Agreement may be terminated by the Minister upon giving at least thirty (30) days notice thereof in writing to the Supplier.

3.3 Completion by the Supplier of the services outlined in article 1 or termination of the Agreement by the Minister in accordance with article 3.2 shall in no way relieve or be deemed to relieve the Supplier from any ongoing duties, obligations or liabilities which may arise from this Agreement, including but not restricted to those set forth in articles headed Confidentiality, Rights in Data, and Liability.

3.4 In the event of termination, in accordance with article 3.2, the Minister will pay the Supplier an amount calculated under the terms of payment for all work performed and accepted together with such further amount as will in the opinion of the Minister compensate the Supplier for reasonable expenses continuing after the date of termination, less any amounts that have been previously paid to the Supplier under article 2.

3.5 The parties hereto may by mutual consent extend this Agreement by giving written notice of an intent to do so on or before the termination date defined in Paragraph 1.1 of this Agreement.

4. COPIES

4.1 In the event of termination of this Agreement or of the completion by the Supplier of the services outlined in article 1, the Supplier shall deliver to the Minister all materials including, but not restricted to, all research, reports, papers, tapes, slides, films, photographs, audio-visual material, and all input data or other information submitted to the Supplier or developed by the Supplier in the performance of this Agreement, whether in draft or completed form.

5. CONFIDENTIALITY

5.1 The Supplier shall keep private, treat as being confidential, and not make public or divulge during as well as after the term on this Agreement, any information or material to which the Supplier or staff becomes privy as a result of acting under this Agreement without having first obtained the Minister's consent thereto in writing. Such information shall be provided strictly and solely to those people who are assigned to the performance of the services outlined in Schedule "A".

6. RIGHTS IN DATA

6.1 All research, reports, papers, material, audio-visual material and information forming part of or produced in the performance of this Agreement and all copyrights thereto, and all patents, trademarks and industrial designs arising therefrom, are the property of the Minister, and are hereby assigned by the Supplier to the Minister, provided that the intellectual property rights in pre-existing materials and information belonging to the Supplier shall remain with or vest in the Supplier. The Supplier shall not divulge, release or publish any such research, reports, papers, material, audio-visual material or information, or any part thereof, without first having obtained written permission from the Minister.

6.2 The Minister reserves the right to publish or release in whole or in part, to publish an amended version and not to publish or release at all, or to use or not use as the Minister may deem fit, any research, reports, material, audio-visual materials, or information produced in the performance of this Agreement.

6.3 The Supplier hereby grants to the Minister a non-exclusive license in perpetuity to use any computer software of a generic nature to which the Supplier holds copyright, and that may be

included in any software products delivered to the Minister under this Agreement.

6.4 Notwithstanding the above, the copyright to any computer software of a generic nature bearing the copyright of the Supplier that may be used in the performance of the Supplier's services under this Agreement, or that may be included in any software delivered to the Minister, shall remain with the Supplier. The Supplier will not claim a copyright to any material which is not legitimately the Supplier's work, and will not claim a copyright to any work developed using the Minister's funds or to any work which is unique to this Agreement. The Minister may modify any such software as required, so long as the Supplier's original copyright notification is not deleted or changed. The Minister shall not permit any party other than the Province of Nova Scotia to make use of such software without the permission of the Supplier.

7. INDEPENDENT CONTRACTOR

7.1 It is understood and agreed that this Agreement is a contract for the performance of a service and that the Supplier is engaged as an independent contractor and is not nor shall be deemed to be an employee, servant or agent of the Minister.

8. LIABILITY

8.1 The Minister shall not be liable for any injury or damage (including death) to the person or for the loss of damage to the property of the Supplier in any manner based upon, occasioned by or in any way attributable to the Supplier's services under this Agreement unless such injury, loss, or damage is caused solely and directly by the negligence of an officer or servant of the Minister while acting within the scope of his employment.

8.2 The Supplier shall use due care in processing the Minister's work. The Supplier shall not be liable for any indirect or consequential damages related to the services performed under this Agreement unless caused by the Supplier's negligence.

9. PERFORMANCE

9.1 The Supplier shall faithfully, honestly, and diligently service the Minister during the period of this Agreement.

9.2 It is understood that the Supplier shall provide office space equipped with such furniture, together with such staff and other services and equipment as may be necessary for the carrying out of the services required under this Agreement. The Minister may provide at his discretion and for such time period as the Minister deems appropriate, office space and facilities to the Supplier as may be necessary for the carrying out of all or part of the services required under this Agreement.

9.3 The Minister reserves the right to demand that the Supplier replace any individual who is working on the project and who is found to be unsuitable in the Minister's sole discretion.

10. TITLE AND ACCEPTANCE

10.1 Except as otherwise provided in this Agreement, title to the product defined in Schedule "A" attached hereto or any part thereof shall vest in the Minister upon delivery to and acceptance by the Minister. Upon any payment being made on account of materials, parts, work in process, or finished work, title to the goods and services so paid for shall vest and remain in the Minister, and the Supplier shall be responsible therefor, it being understood and agreed that such vesting of title in the Minister shall not constitute acceptance and shall not relieve the Supplier of its obligations to perform the work in conformity with the requirements of this Agreement.

11. PRODUCTS TO BE DELIVERED

11.1 Under this Agreement the Supplier will deliver the items as referred to in the Schedule "A" attached hereto to the Minister, and these items shall conform to the format and standards established by the Minister during the course of the Agreement and conveyed to the Supplier by notice.

11.2 No work shall be considered complete until it has been accepted and approved in writing by the Minister.

12. FORCE MAJEURE

12.1 The Supplier shall not be liable for failure to provide the services outlined in Schedule "A" if such failure is due to causes beyond its reasonable control if and only if the Minister is notified within five (5) days in writing of the existence of such a failure, its causes and the reasons for its being beyond the reasonable control of the Supplier.

13. ASSIGNMENT

13.1 The Supplier shall not assign or sublet this Agreement or any part thereof without the written permission of the Minister.

14. NOTICES

14.1 All notices under this Agreement shall be deemed duly given, upon delivery, if delivered by hand; or three days after posting if sent by registered mail, receipt requested; to a party hereto at the address set forth herein or to such other address as designated by a party by notice pursuant hereto. Nothing in this section shall prevent notice from being given by any other means.

The Minister
Office of the Deputy Minister
Transportation & Public Works
Johnston Bldg.
P.O. Box 186
Halifax, Nova Scotia
B3J 2N2

The Supplier
SUPPLIER'S ADDRESS

15. TIME SHALL BE OF THE ESSENCE

15.1 Time shall be of the essence of this Agreement, provided that the time for completing any of the work that has been or is likely to be delayed by reason of Force Majeure may be extended at the Minister's discretion if the other terms of this contract are satisfied.

16. ENTIRE AGREEMENT

16.1 This Agreement and the Schedules attached hereto or referred to herein constitute the whole Agreement between the parties unless duly modified in writing and signed by both parties. No representation or statement not expressly contained herein shall be binding upon either party.

16.2 The Schedules attached hereto form an essential part of this Agreement and should there be any conflict between the general terms and conditions of the Agreement and the Schedules then the Schedules govern the Agreement interpretation.

17. GOVERNING LAWS

17.1 This Agreement shall be construed and interpreted in accordance with the laws of the Province of Nova Scotia.

18. CONSENT TO BREACH NOT WAIVER

18.1 No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, a waiver of, or excuse for any different or subsequent or a continuation of the same breach unless expressly stated.

19. PARTIAL INVALIDITY

19.1 If any term or provision of this Agreement shall be found to be illegal or unenforceable, notwithstanding, this Agreement may, at the Minister's option, remain in full force and effect and such term or provision shall be deemed removed from the Agreement.

20. DEFINITION OF SUPPLIER

20.1 References to the Supplier shall include employees, servants and agents of the Supplier, independent contractors to the Supplier and employees, servants, agents and independent contractors of assignees if the Agreement or its performance is assigned.

21. SECURITY AND PRIVACY

21.1 The Supplier shall comply with all security and privacy procedures and policies of the Minister as they may be, from time to time, forwarded to the Supplier.

22. AUTHORITY

22.1 The signatories of this Agreement hereby personally warrant that they have the full power and authority to enter into this Agreement on behalf of their respective principals and that the person signing this Agreement on behalf of each has been properly authorized and empowered. Each party further acknowledges that it has read the Agreement, understands it, and agrees to be bound by it.

23. OFFERS OF EMPLOYMENT

23.1 Each party to this Agreement, throughout the term of the Agreement and for a period of six months thereafter, hereby undertakes that, without the prior written approval of the other party, it shall not induce any employee(s) of the other party to terminate his or her employment with the other party.

24. EFFECTIVE DATE

24.1 This Agreement shall take effect as if it has been executed by both parties on the nnth day of xxx, yyyy.

IN WITNESS WHEREOF Her Majesty the Queen and the Supplier have caused this Agreement to be executed by their respective officers duly authorized in that behalf on the dates hereinafter set forth.

WITNESSED BY:

DATED AT Halifax, Nova Scotia,
this day of , A.D., 2005.

_____
Witness

_____
For the Supplier

DATED AT Halifax, Nova Scotia,
this day of , A.D., 2005.

_____
Witness

_____
for the Minister